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Amy M. Bennett
Standards Coordinator
Bureau of Water
2600 Bull Street
Columbia, SC 29201

Dear Ms. Bennett,

The Southern Environmental Law Center ("SELC") submits the following comments on the proposed revisions to R. 61-68. We thank the department for the opportunity to comment on these proposed regulatory changes and to participate in the Triennial Review process. We look forward to continued involvement in the Triennial Review through the stakeholder and public comment processes.

**Bacteriological Standards**

*DHEC Should Retain Single Sample Maximum Values for Enterococcus Testing in Coastal Waters.*

We encourage DHEC to continue implementing single sample maximum values for enterococcus in coastal waters. The criticisms of this current practice are based on it being stricter than the EPA minimum recommendations. We commend DHEC for going beyond EPA minimum protection levels in this regard and believe that implementing a single sample maximum standard in addition to the geometric mean provides an additional layer of protection to human health.

The single sample maximum value adds an important protection that the geometric mean is not capable of providing. The single sample maximum value guards against substantial one time discharges that could potentially be hazardous to human health. The geometric mean standard cannot protect against these one time events because potentially hazardous discharges are not prohibited as long as the discharger can meet their geometric mean requirement. While the geometric mean may ultimately drop within compliance levels following a discharge above the existing single sample maximum, the threat to human health at the time of the hazardously high discharge would still exist – it would simply go unchecked.

Though the single sample maximum standard has been a source of contention to this point in the stakeholder process, no data has been presented to demonstrate that facilities are in wholesale non-compliance. Until statistically significant data is produced demonstrating that the standard is one that does not provide additional protection to water

quality and cannot be met by even the most vigilant dischargers, DHEC should continue to implement the single sample maximum value for enterococcus in coastal waters.

We discourage DHEC from relying on other states' exclusion of a single sample maximum standard from their regulatory programs without consideration of those programs as a whole. Considering the presence or absence of a single sample maximum entero standard in isolation does not address the full regulatory picture. As in South Carolina, other states have programs with various interrelated requirements put in place to protect water quality. Consequently, other states may not have single sample max values, but may have other aspects of their programs that act as a substitute for that value or obviate its use. Without an understanding of how the complete programs of these states are similar or dissimilar to South Carolina's regulatory program, the agency should exercise extreme caution in using other states' treatment of a single parameter to guide its inclusion or exclusion of the single sample max value for enterococcus.

*DHEC Should Retain the Five Consecutive Sample Requirement for Fecal Coliform.*

DHEC should continue to implement the five consecutive sample standard in its fecal monitoring program. As currently applied, the five consecutive sample language only applies to those discharges that are in frequent violation of fecal standards. Additionally, it is based on five consecutive samples, not calendar days, and therefore does not reduce protection.

The five consecutive sample standard does not convert a 30 day standard to a five day standard. Rather, NPDES permits applying this standard require reporting of the geometric mean of five consecutive samples, which may be spread out evenly over the month. For example, where a permit requires two samples each week, a discharger will sample eight times per month. The discharger must calculate the geometric mean for every five consecutive sample days on a rolling basis, resulting in four geometric means,[1] and then report the highest geometric mean measured to DHEC. This procedure is more protective of water quality than requiring five evenly spaced samples over a 30 day period; a procedure that would result in a single geometric mean and only five samples. Since the five consecutive sample standard is more protective than the proposed five evenly distributed sample standard, it should be retained in the regulations.

*DHEC Should Continue to Take Steps to Develop Non-Fecal Indicator Standards.*

We realize that DHEC has experienced some data difficulties in transitioning indicator species from fecal coliform to enterococcus or E. coli, but encourage DHEC to

[1] The first geometric mean would include samples from days 1 through 5, the second would cover samples from days 2 through 6, the third mean would cover samples from days 3 through 7, and the fourth mean would cover samples from days 4 through 8.

continue to develop necessary background data to implement these standards. There is significant evidence demonstrating that both enterococcus and E. coli are substantially better indicators of threats to human health than fecal coliform and we encourage DHEC to take whatever actions are necessary to transition to those indicator species as soon as possible. We appreciate that this would subject some dischargers to testing for three indicator species. To promote open consideration of this issue during the stakeholder process, DHEC should estimate the number of dischargers that would be affected by additional indicator species requirements and approximate the increased cost per discharger related to the added testing procedures.

**Source Water Protection Areas**

We support DHEC's efforts to clarify regulations regarding source water protection areas. In addition to the new language, there are two ways that the regulation could be further clarified. First, it should state that where aquatic life standards are more stringent, that they control effluent limitations. As the regulation is currently proposed to be rewritten, the relationship between these standards and aquatic life standards is unclear. Second, the regulation should include a diagram depicting an intake, potential dischargers, and the TOT10 point. We support DHEC's decision to use the TOT10 flow rather than the flow at the intake as the applicable flow for regulatory purposes. Using this flow is more protective of human health than using the flow at the intake and should be continued.

**The 0.10 Rule**

We support DHEC's clarification of the existing dissolved oxygen ("DO") regulation to make it consistent with the statutory standard of 0.10 mg/l. We also support DHEC's interpretation of the rule, applying it year round to water bodies that exhibit naturally low DO at any time during the year. Since low DO can be lethal to a number of species, it is clearly an issue that should be granted serious consideration and addressed on a holistic basis. Restricting DO reductions in such water bodies is an appropriate way of protecting the aquatic ecosystems in these water bodies.

**Outstanding National Resource Waters and Outstanding Resource Waters Standards**

DHEC should not alter the ONRW/ORW discharge prohibitions to allow new or expanded discharges under any circumstances. These classifications include a small number of water bodies in the state, are particularly difficult to obtain, and are necessary to protect the existing resources in those water bodies. The prohibition of new and expanded discharges is unambiguously protective of water quality. Multiple stakeholders have proposed altering the classification to allow the consolidation of

existing discharges if the new discharge would "improve" water quality. This proposed revision would open a potentially devastating loophole in the existing standards, allowing some new and expanded discharges. It would also require the promulgation of rules for evaluating the consolidation of proposed new or expanded discharges, creating a substantial administrative burden for the agency. Furthermore, the existing standards currently provide an avenue for improving water quality: discharges may be reduced or eliminated. If the purpose of the suggested revision is to improve water quality, DHEC should request documentation that the current standard is not protective of water quality. If the purpose of the revision would be to allow development or growth related discharges, the proper avenue for adjusting the protections in place for an ONRW or ORW is to petition to have the specific water body in question reclassified, not to substantially weaken the entire classification. Therefore, we urge DHEC not to change to the ONRW/ORW standards.

Thank you for the opportunity to submit these comments. If you would like to discuss any of our comments in further detail, please feel free to contact us.

Sincerely,

J. Blanding Holman IV

Geoffrey R. Gisler